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DOMESTIC CORPORATIONS.

CALIFORNIA.

STOCKHOLDERS' LIABILITY. In Journal No. 49, page 29, we made reference to several cases on the liability of stockholders. Reference to the case of Lum v. American Wheel and Vehicle Co., 165 Cal. 657, 133 Pac. 303, was omitted. In this case the court held that a California corporation may agree that stock shall be issued fully paid and non-assessable, and on stock protected by such an agreement the directors cannot levy an assessment, where the rights of creditors are not directly involved, notwithstanding the provisions of Secs. 331 *et seq.* of the Civil Code.

DELAWARE.

TAXATION OF PERSONAL PROPERTY. We are frequently asked if Delaware corporations are taxed in Delaware on stocks and bonds owned by them. We take this occasion to reprint excerpts from Chapter 44 of the Revised Statutes of Delaware, 1915:

> "Sec. 1. ASSESSABLE PROPERTY; EXCEPTIONS AND EXEMPTIONS: All real and personal property, not belonging to this State, or the United States, or any County of this State, or any church or religious society, and not held by way of investment, or any college or school and used for educational or school purposes, or any corporation created for charitable purposes and not held by way of investment, except as otherwise provided, shall be liable to taxation and assessment for public purposes. (Page 501.)
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> "Provisions necessary for the use and consumption of the owner and his family for the year, (not including live stock), farming utensils, and working tools of mechanics, or manufacturers, constantly employed in their business,

the implements of a person's trade, or profession, stock on hand of a manufacturer or tradesman, except as by law otherwise provided, household furniture other than plate, grain and other produce of land, wearing apparel, ready money, bonds and other securities for money, goods, wares and merchandise imported, and vessels trading from any part of this State, shall be exempted from assessment." (Page 506.)

THE USE OF THE WORD "TRUST" IN THE CORPORATE NAME. In our Journal No. 46 we referred to the repeal of paragraph 642 of the Revised Statutes of Delaware, 1915, prohibiting the use of the word "trust" except to corporations reporting to and under the supervision of the Insurance Commissioner of the State.

This paragraph was repealed for the purpose of correcting a repetition in the Revised Statutes. The laws restricting the use of the word "trust" to corporations reporting to the Insurance Commissioner and requiring such corporations to make two reports each year to the Commissioner, are still in force, being paragraphs 1997, 1998 and 1999 of the Revised Statutes.

NEW JERSEY.

MERGER. Following the rule laid down in Colgate v. United States Leather Co., 75 N. J. E. 230, 72 Atl. 126, see Journal No. 6, Stevens V. C. granted an injunction to restrain the merger of the United Shoe Machinery *Company* into the United Shoe Machinery *Corporation*. The objects of the two companies are different in that the *Corporation* has the power, among others, "to construct bridges, buildings, machinery, boats, docks, ships," etc., etc., while the charter of the *Company* contains no such provision. Under the New Jersey Act corporations may consolidate only if they are organized for the purpose of carrying on business of the same or a similar nature. If the primary charter powers of one corporation are broader than those of another the latter cannot be merged into the former under Sec. 104 of the Corporation Act. Copeland *et al.*, v. United Shoe Machinery Co., *et al.*, 94 Atl. 404.

NEW YORK.

LIABILITY OF DIRECTORS FOR STATEMENTS IN PROSPECTUS. In Downey v. Finucane, 205 N. Y. 251, referred to in Journal No. 31, the Court of Appeals held that promoters were liable for misrepresentations of their agent made in the prospectus to induce subscriptions to stock. In a recent case the same court held that a director is not liable for misrepresentations contained in a prospectus issued by his co-directors without his knowledge or consent. The court does not attempt to rule whether or not a director could be held for negligence by one who had been misled by the prospectus, as no such issue was presented in this case. Rives v. Bartlett, 109 N. E. 83.

OREGON.

DISSOLUTION—WINDING UP. Under Lord's Oregon Laws, Sec. 6699, a corporation exists for five years after dissolution, if necessary to prosecute or defend

suits or settle its affairs. Suits commenced before the expiration of the five-year period may not be prosecuted to a final judgment after the expiration of five years. Service & Wright Lumber Co. v. Sumpter Valley Ry. Co., 149 Pac. 531.

FOREIGN CORPORATIONS.

ALABAMA.

A FOREIGN TRUST COMPANY may take title to property in Alabama as trustee under a deed of trust to secure an issue of bonds without first complying with the laws of that State relating to foreign corporations. In Continental Trust Co. v. Tallassee Falls Mfg. Co., 222 Fed. 694, it was held that the execution of a mortgage deed of trust outside of the State by one foreign corporation to another foreign corporation, covering real property in Alabama, was not "engaging in or transacting any business in this State" within the meaning of Sec. 3642 of the Code of Alabama, 1907.

CANADA.

POWERS OF PROVINCIAL COMPANIES. On page 32 of Journal No. 49 we referred to the case of The Bonanza Creek Gold Mining v. The King, which held that a Provincial company cannot exercise its "substantive" powers outside of the province in which it is formed. We are informed that this case will go to the Privy Council in London for final determination. The question to be passed upon will be whether a provincial company has less civil status in a sister province than a foreign corporation.

MANITOBA.

CONTRACTS ARE NOT VOID FOR FAILURE TO REGISTER, but an unregistered foreign corporation cannot maintain an action thereon until it has duly registered and received a license to do business. Consolidated Investments v. Caswell, 21 D. L. R. 525. This Province follows the rule in Ontario which has a similar statute. Semi-Ready, Ltd. v. Tew, 19 O. L. R. 227. The wording of the British Columbia statute is different and there it has been held that a contract made by an unlicensed company is illegal and void. See Northwestern Construction Co. v. Young, 13 B. C. R. 297.

MICHIGAN.

"DOING BUSINESS." A foreign corporation appointed an agent in Michigan to devote all his time to selling its goods. Goods were shipped to the agent from time to time. Title remained in the corporation until the goods were sold. The agent remitted each week the special price to him of all goods sold during the week, retaining the difference between that amount and the retail price as his commission. The Supreme Court of Michigan held this to be "doing business" and denied

the corporation the right to sue on the contract, since it had not obtained authority to transact business in Michigan before the contract was executed. E. A. Lange Medical Co. v. Bruce *et al.*, 152 N. W. 1026.

PENNSYLVANIA.

POWER TO HOLD REAL ESTATE. No foreign corporation may hold real estate in Pennsylvania unless specially authorized by statute (Act of April 26, 1885). Since that date many classes of foreign corporations have been authorized to hold real estate necessary for corporate purposes. The latest acts include foreign corporations incorporated for the purpose of

Refining and selling petroleum products (Act of April 9, 1915);

Mining and manufacturing of clay into brick, tile and other products produced from clay or from clay and other substances mixed therewith; (Act of May 13, 1915.)

Manufacture and sale of explosives; (id.)

Manufacture of fire-brick and refractories and mining of raw material therefor;

Manufacture, storage, distribution or sale of dairy or creamery products; (id.)

Manufacture and sale of collapsible tubes and metal specialties. (id.)

TEXAS.

CONTRACTS TO ACQUIRE PROPERTY. A foreign corporation is prohibited from doing business in Texas unless it secures a permit from the Secretary of State. Corporations cannot enforce contracts entered into before obtaining a permit in any suit or action in the Courts of the State. This does not apply to contracts of every kind, however. The Court of Civil Appeals of Texas said in a recent case: "It is not unlawful for a foreign corporation to contract in regard to buying property in Texas, in contemplation of doing business in this State; for, if such preliminary matters as are necessary to begin any large business could not be the subject of a contract by a foreign corporation, such as arrangement for building sites, etc., it could not place itself in a position to know whether it could do business here. The purpose of this corporation (the plaintiff) was to cut the timber, manufacture and sell the lumber. So the contract for the purchase of the timber was not carrying on the proposed business. It is true that it would have to obtain a permit before it could carry on that business; but the risk of obtaining a permit was one it had the right to assume when it made the contract. It had the right to assume that, if it complied with our laws and applied for a permit when it got ready to do business, that permit would be granted because the purpose was a lawful one. It had not at that time done any business in Texas, and it had a right to make the contract it is alleged was made." Philip A. Ryan Lumber Co. v. Ball, 177 S. W. 226.

TAXATION.

WISCONSIN.

MANUFACTURING COMPANIES—COMPUTATION OF STATE INCOME TAX. The State income tax law of 1911 provides in part for the imposition of a tax upon incomes received by persons doing business within and without the State, taxing, however, only such proportion of the income as is derived from business transacted and property located within the State. This proportion is determined in the manner prescribed by statute. A local manufacturing company having its plant in Wisconsin maintained several branches in other States. The stocks of goods at these branches were in part manufactured by the company in Wisconsin and in part purchased by the company from manufacturers and dealers outside of Wisconsin and shipped to the branches either directly from the places of purchase to the company's factory in Wisconsin and then reshipped to the branches. Customers of the branches were sometimes supplied from the goods on hand and sometimes from the factory in Wisconsin. The company's income under consideration was, therefore, from four sources: (*a*) from the manufacture, sale and delivery of goods from its factory to customers residing in Wisconsin; (*b*) from the manufacture, sale and delivery of goods from its factory to customers residing outside the State of Wisconsin; (*c*) from the manufacture of goods at the factory, sent to branch houses outside of Wisconsin, and the sale and delivery of such goods from the branch houses to customers residing outside of the State of Wisconsin, and (*d*)the purchase of goods in the markets outside of Wisconsin and shipped from the place of purchase, either directly or by way of the company's plant in Wisconsin, to its branches and the sale and delivery of such goods to customers outside of Wisconsin. The Supreme Court of Wisconsin held that the income derived from the sources designated as (*a*), (*b*) and (*c*) were taxable as income "derived from business transacted and property located within the State." The source designated as (*d*) was held to be outside the State and income therefrom not taxable. The Court said in part: "Such business is transacted and located without the State, excepting incidental management from and accounting for the result thereof to the plaintiff's principal office at Carrolville [Wisconsin]. The carrying on of this part of the trade according to the findings of fact produced an income which issued out of the business and property located without the State." It was contended that to tax the income derived from (*b*) and (*c*) was an attempt to burden interstate commerce and therefore unconstitutional, but the court held that an income tax imposes a burden on citizens wholly unlike a tax upon their business or commerce. It deals only with that part of the fruits of such commerce which remains as net proceeds after all the immediate burdens of the commerce have been discharged and does not impose a burden on business or property in any sense repugnant to the commerce clause of the federal constitution. U. S. Glue Co. v. Town of Oak Creek, 153 N. W. 241.

INCOME TAX.

RULINGS AND REGULATIONS.

Since our last issue (see Corporation Journal, p. 39) a case has been handed

down by the U. S. District Court, Western District of Michigan, Southern Division, Mitchell Bros. Company v. Doyle—not yet reported—in which it was held that under the Corporation Excise Tax Law the difference between the original cost price of property and its increased fair market value at the time of the incidence of the tax may properly be added to the original cost in determining the amount to be deducted on account of depreciation of property or for restoration of capital in computing net income from the sale of such property (p. 485).

A circular letter has appeared in use by the Treasury Department for demanding explanation of items appearing in annual returns. This letter contains rulings regarding depreciation, taxes and rentals (p. 486).

A mimeograph letter of the Treasury Department requires ownership certificates to be obtained in all cases of payment of interest on bonds, but not in making payment ot other income to firms, organizations or fiduciaries where the withholding agent knows that the payee is not liable to the withholding provisions of the law (p. 488).

A letter holds that if a corporation makes an agreement with its creditors whereby it is released from a part of its indebtedness the amount of the debt so forgiven constitutes income (p. 489).

The opinion in the case of Industrial Trust Co. v. Walsh, 222 Fed. 437, holds that an increase in book value of securities held as an investment for surplus funds does not constitute income under the Corporation Excise Tax Law, but should be treated an increase of capital merely (p. 489).

The ruling of April 28, T. D. 2201, regarding bad debts has been amended (p. 490). Collectors are authorized to sign "commercial receipts" and endorse voucher checks in payment of the tax. Heretofore collectors have refused to give any but the official receipt (p. 491).

A mimeograph letter instructs the collectors to make examination of the records of leases for the purpose of discovering tenants who pay rentals in excess of $3,000 annually (p. 492).

An important ruling regarding fiduciaries holds that Form 1019 cannot be used when the income affected is payable by the fiduciary to a beneficiary, who would not be liable under the statute if such income were paid directly to the beneficiary. The ruling also holds that income of trust estates not distributed is liable for the normal and additional tax (p. 493).

(Note: The page references above are to our Income Tax Service, in which these rulings and regulations are printed in full. Some of the rulings are formal treasury decisions. Others are contained in letters in answer to specific questions.)

WAR TAX

RULINGS AND REGULATIONS.

Since our last issue (see Corporation Journal, p. 39) T. D. 2164 has been explained, the Treasury Department now holding that documentary stamps may be affixed to indentures only in cases where temporary bonds are issued to be replaced by permanent bonds. In all other cases the stamps must be affixed to the bonds (p. 282).

Subscription warrants are taxable upon transfer when they entitle the holder to full paid shares upon presentation to the corporation or its transfer agent (p. 282).

A Treasury Decision defines the status of certain described beverages for the purpose of the tax (p. 283) and another requires a separate special tax for each separate attraction traveling with a carnival company for which a separate admission is charged (p. 284).

(Note: The page references above are to our War Tax Service, in which the rulings and regulations are printed in full. Some of the rulings are formal treasury decisions. Others are contained in letters answering specific questions.)

FEDERAL RESERVE.

RULINGS AND REGULATIONS.

Two important regulations have been issued in July. One for the guidance of Federal Reserve agents in the matter of issuance and redemption of Federal Reserve notes (p. 277) and the other a regulation authorizing Reserve Banks to rediscount "trade acceptances" under Section 13 of the Federal Reserve Act. In issuing this regulation the Board expresses the belief that it will considerably enlarge the scope of service of Federal Reserve Banks and, incidentally, assist in developing a class of "double-name" paper, which has shown itself in so many countries a desirable form of investment and an important factor in modern commercial banking systems (p. 281).

(Note: The page references are to our Federal Reserve Act Service which reports all rulings and regulations under the Federal Reserve Act.)

TRADE COMMISSION.

The Trade Commission is still holding hearings throughout the country on foreign trade and on conditions in various large domestic industries. The Commission also announced that it would hold informal hearings in connection with informal complaints filed with the Commission by various parties, alleging unfair methods of competition on the part of their competitors. No rulings have been issued as yet by the Board on unfair methods of competition.

SERVICE

The newest meaning attached to the word "Service" is not to be found in dictionaries.

It refers to the Service rendered by this Company. It means "the best thing of its kind."

We do not make this assertion. We are repeating what many of our clients have said.

CORPORATION SERVICE	Assists Attorneys in the organization of corporations and licensing of foreign corporations in all states and provinces.
LEGISLATIVE SERVICE	Reports on new laws and pending legislation in every State Legislature and Congress.
REPORT AND TAX SERVICE	Gives timely notice of reports to be filed and taxes to be paid by corporations in all states and provinces.
INCOME TAX SERVICE	Reports Rulings and Regulations under the Income Tax Law.
WAR TAX SERVICE	Reports Rulings and Regulations under the Emergency Revenue Law.
RESERVE ACT SERVICE	Reports Rulings and Regulations of the Federal Reserve Board.
TRADE COMMISSION SERVICE	Reports Rulings and Decisions of the Federal Trade Commission.
SUPREME COURT SERVICE	Reports Decisions of the U. S. Supreme Court.

You may be receiving one or more of these services. You will find the others answer your need equally well.

Information regarding any service may be obtained from our nearest office.

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The Corporation Trust Company

ESTABLISHED 1892

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